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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,948	03/15/2004	Daniel B. Nielson	2507-6358US (22043-US)	2920

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EXAMINER

FELTON, AILEEN BAKER

ART UNIT

PAPER NUMBER

1755

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,948

Applicant(s)

NIELSON ET AL.

Examiner

Aileen B. Felton

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1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8, 10-28, 30-33 and 35-51 is/are pending in the application.
- 4a) Of the above claim(s) 5-8, 10-15, 17-24, 27, 28, 30-33 and 35-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 16, 25, 26, 50 and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 5-8, 10, 11, 12-15, 17-24, 27, 28, 30-33, and 35-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/18/2006. Claims which require further components have been withdrawn as nonelected. This is because they were not included in the original election, i.e. the components of claim 16 and also because the claim scope now excludes them. Claims 2 and 3 are rejoined, per Applicant's request.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Posson et al (6,896,751).

Posson et al discloses a propellant for use in munitions that comprises a 25 % or less of a terpolymer of hexafluoropropylene, vinylidene fluoride, and tetrafluoroethylene (col. 4, lines 5-15). The composition includes a primary fuel from 5-50 % that can be

any active fuel and includes metals (col. 4, lines 58-67). Note that all other components are optional since Posson indicates that they "may" be included.

4. Claims 1, 2, 3, 25, 26, and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Posson et al (6,427,599).

Posson et al discloses a reactive composition for use in a decoy flare that comprises magnesium of 60 %, Teflon of 30 %, and Viton of 10 % (col. 28, lines 65-68 and col. 29, lines 1-5). Example 1 discloses pellets from 2.5-95 grams. The composition is used in a munitions casing and is capable of reacting upon impact.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Posson et al(6,896,751) as applied to claims 1, 2, 3, and 11 above, and further in view of Koch (6,635,130).

Koch teaches the use of hafnium as a fuel with fluoropolymers in a decoy flare (col. 2, lines 43-55).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use hafnium as taught by Koch since Koch indicates that it is a known fuel to use with fluorocarbons and also since Koch indicates its equivalence as a

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fuel with other metal fuels such as magnesium and aluminum which are the fuels used in Posson.

7. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Posson et al(6,896,751) in view of Koch as applied to claims 1, 2, 3, 11, and 16 above, and further in view of Posson et al (6,427,599).

Posson et al teaches a reactive composition for use in a decoy flare that comprises magnesium of 60 %, Teflon of 30 %, and Viton of 10 % (col. 28, lines 65-68 and col. 29, lines 1-5). Example 1 discloses pellets from 2.5-95 grams.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teachings of Posson ('599) with the disclosures of Posson ('751) and Koch since they all relate to similar reactive compositions with fluoropolymers and metals since Posson ('599) teaches that it is known to form these compositions into pellets of a certain weight. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the parameters of the propellant to achieve a desired result. It is well-settled that optimizing a result effective variable is well within the expected ability of a person of ordinary skill in the subject art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980), In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1955).

Response to Arguments

8. Applicant's arguments filed have been fully considered but they are not persuasive. Applicant's arguments regarding Posson ('751) are not persuasive since

Posson indicates that all of the other ingredients are optional by the use of the word "may".

9. Applicant's other arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aileen B. Felton whose telephone number is 571.272.6875. The examiner can normally be reached on Monday-Friday 6:30-4:00, except alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571.272.1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


AILEEN FELTON
PRIMARY EXAMINER